***THE HONOURABLE SRI JUSTICE V.ESWARAIAH**

+WRIT PETITION No.18344 OF 2007

% DATED: 30.08.2007

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K.R.Krishna Goud,
S/o Sri Ramesh Goud,
aged about 45 years,
President,
Toddy Tapper Cooperative Society,
Koheer village,
Medak District.

…PETITIONER

Vs.

$ The Prohibition & Excise Superintendent,
Sangareddy,
Medak District.

…RESPONDENT

! COUNSEL FOR THE PETITIONERS: SRI T.PRASANNA KUMAR

^ COUNSEL FOR THE RESPONDENTS: GP FOR EXCISE

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>Head Note

? Cases referred

1. 1994(2) ALT 270
2. 2003(5) ALT 475

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THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No:18344 of 2007

DATED:30-08-2007

BETWEEN:

K.R.Krishna Goud.

..... PETITIONER

AND

The Prohibition & Excise Superintendent,
Sangareddy,
Medak District.

.....RESPONDENT

ORDER:

Heard learned counsel appearing for the petitioner as well as the learned Government Pleader for Excise appearing for the respondent.

2. Petitioner-President of the Toddy Tappers Cooperative Society, Koheer village and mandal, Medak District questions the order of the respondent, dated 10-01-2007, in Cr.No.B3/75/2006 cancelling the licences of the toddy shop TCS Group Koheer bearing Nos.21, 22, dated 19-04-2002, and Toddy Depot licence No.2, dated 19-04-2002, granted in favour of the petitioner for the rest of the period upto
31-03-2007.

3. It is stated that the said licences have been granted for the sale of toddy upto 31-03-2007 and as per the orders of the Government in Memo No.14139/Ex.II(1)2007-1, dated
29-03-2007, Government permitted the Commissioner, Prohibition & Excise, Hyderabad to extend licence to the toddy shops which expires by 31-03-2007. It is the case of the petitioner that the Special Task Force raided the house of one C.Narasimha Reddy

of Koheer village and found some adulterated materials like Alprazolem on 22-11-2006 and a Crime was registered against him and other persons and they have also seized the toddy samples from the depot and suspended the TCS Nos.21 and 22 licences on 11-12-2006 and subsequently issued a composite show cause notice, dated 20-12-2006, for which an explanation was submitted on 30-12-2006 denying all the allegations and though the toddy samples drawn from the toddy depot were found free from adulteration, not only the toddy shop licences Nos.21 and 22, but also the toddy depot licence was suspended and thereafter the licences have been cancelled by the impugned order. It is stated that, earlier, members of the Society filed W.P.No.10013 of 2007 and the same was withdrawn on
13-08-2007 on the ground that the members cannot question the said cancellation and therefore petitioner being the President of the Society filed this Writ Petition questioning the said order.

4. The admitted facts are that the licence No.2, dated
19-04-2002, for establishment of toddy depot, in favour of the petitioner TCS Gr.Koheer mandal, Koheer was granted for the period from 01-04-2002 to 31-03-2007 for the supply of toddy to the TCS group Koheer two shops, situated at Koheer. The toddy depot is in Sy.No.335/Y at Koheer bounded on four sides by the lands belonging to one Ch.Gopal Reddy. The toddy shop licence Nos.21 and 22 both dated 19-04-2002 were granted upto 31-03-2007, subject to certain terms and conditions and subject to the special and general conditions relating to the intoxicants, and other rules and orders which are in force issued from time to time. Whileso, the Special Task Force, Hyderabad, Prohibition & Excise on reliable information raided the house of the said Ch.Narasimha Reddy and seized the following properties under cover of

panchanama:

1. *One plastic pet bottle containing white Alprazolem of about 1 ½ kg;*
2. *three jute bags containing powder similar to wheat powder 120 packets each 1kg.*
3. *four jute bags containing 115 paste packets each 2 ½ kgs.*
4. *three packets containing powder similar to wheat powder.*
5. *three paste packets each of 2 ½ kg each 1 kg.*

List of samples:

1. *three sealed sample packets of Alprazolem of each 20 gms.*
2. *three sealed samples of toddy each 400 ml.*
3. *fifteen sample packets of powder similar to wheat powder of each 1 kg.*
4. *twelve sealed sample packets of each 2½ kg.*

Thereafter, they have also raided the toddy depot situated at Koheer and seized 1½ kg Alprazolem along with the aforesaid material and registered a case against the petitioner herein and three others namely Ch.Narasimha Reddy, Manikyam Goud, and Balrajgoud. The samples of all the materials, chemicals, and toddy were also taken and the inspection in respect of the land of the said Narasimhareddy on the depot was made at 11.30 a.m., on 22-11-2006 and prior to that at 9.00 a.m., they have inspected the toddy shops and from there they visited the house of the said Narasimhareddy in whose house the said Alprazolem and other adulterants have been stored are found. When questioned about the said seized articles he informed that he leased out a portion of his agricultural land to the toddy depot for the last twelve years and at present the said Balrajgoud, Hyderabad, who is one of the accused, is doing business, and the said powder and paste were

being stored by the said Balrajgoud with a view to manufacture contraband toddy and the Supervisor, Mr.Manikyam, will come and take some quantity of powder and paste every day, and he is getting rent of Rs.4000/- per month. The said Narasimhareddy accompanied the authorities to the toddy depot and showed them the material being taken by the said Manikyam for the manufacture of adulterated toddy. Thereafter, the raiding party, as per the confession statement of the said Narasimhareddy, visited the toddy depot and found 1½ kg substance of the Alprazolem which is a narcotic and psychotropic substance.

5. The sample was sent for analysis and the seized substance was found as Alprazolem, but however, the toddy was found free from adulteration. The licencing authority by order, dated 11-12-2006, in Cr.No.B3/752/2006, suspended the toddy shop licences as well as the toddy depot licence on the ground that the substance of 1½ kg Alprazolem found in the today depot is a narcotic and psychotropic drug, three jute bags containing powder similar to the wheat powder, 113 paste boxes each 2.5 kgs and the storage of the prohibitory articles is only for the purpose of adulterating the toddy and thereby contravened Rule 5 of the A.P.Excise (Tapping of trees and Toddy Shop Special Conditions) Rules, 1969 besides Rule 11 of the A.P.Excise (Arrack & Toddy licenced General Conditions) Rules, 1969 punishable under Section 8(c) r/w 22 of NDPS Act, 1985 and Section 34(e) of the A.P.Excise Act and also violated the conditions of the licence. Thereafter, the licensing authority issued a show cause notice, dated 20-12-2006, in view of the aforesaid facts and circumstances and as seized 1½ kg Alprazolem which is a narcotic and psychotropic drug from the toddy depot apart from the powder and paste and as the licencee violated

Rule 5 of the Special Conditions and Rule 11 of the General conditions and as the action of the licencee also attracts the penal provisions under Section 34(e) of the Act and Section 8(c) r/w 22 of NDPS Act, the licences have been cancelled. Petitioner questions the said order on the ground that the Excise authorities have not inspected the toddy shops but they inspected the toddy depot only and therefore, it cannot be said that the petitioner has violated any terms and conditions of the toddy shop licence.

6. It is further stated that as per the judgment of this Court in ***SATYANNA GOUD AND OTHERS v. THE EXCISE SUPERINTENDENT, MAHABUBNAGAR DISTRICT AND OTHERS***[1] it is not open for the Excise authorities to cancel the licence of the toddy shop based on the inspection of the toddy depot which is nothing to do with the licencee. In the case of **Satyanna Goud**, admittedly there was no inspection in respect of the toddy depot and the licence of the TFT was cancelled only on the confession statement of a person found in unauthorized toddy depot, whereas in the instant case the toddy depot itself has been inspected and the person from whose possession huge quantity of adulterant was found accompanied the toddy depot. In the case of TFT the licencee is authorized to carry toddy in single counter, whereas in the case of TCS shop the licencee is authorized to pool the toddy by obtaining a depot licence and sell the same and therefore, the said facts of the case are not applicable to the facts and circumstances of this case.

7. Learned counsel appearing for the petitioner relying on a decision in ***TODDY COOPERATIVE SOCIETY, YELLAREDDYPET v. SUPERINTENDENT OF PROHIBITION &***

EXCISE, KARIMNAGAR DISTRICT AND OTHERS[2] contended that unless the licence of the toddy depot is cancelled the question of cancelling the toddy shop licence under Section 31(2) of the Act does not arise. The facts in the case of **Toddy Cooperative Society** go to show that without issuing show cause notice as to why the three toddy shops licences should not be cancelled for adulteration of toddy in the toddy depot all the three shops licences have been cancelled and in those circumstances the cancellation of licence without issuing show cause notice was set aside but whereas in the instant case a common show cause notice has been issued for cancellation of the toddy depot licence as well as two toddy shops licences of the toddy shop TCS group, Koheer and only after issuing show cause notice, licences have been cancelled. Therefore, the facts in the said case are also distinct.

8. It is pertinent to note that the petitioner-President of Toddy Cooperative Society is also accused in the criminal case and it cannot be said that without his knowledge the members could have filed W.P.No.10013 of 2007 questioning the same impugned order which is said to have been withdrawn on 13-08-2007. Without the knowledge, connivance, and design of the petitioner the said Writ Petition could not have been filed and withdrawn. It appears the said Writ Petition has been filed to avoid a particular Court and was withdrawn without seeking any permission or liberty to question again. Therefore, there are no bonafides on the part of the petitioner to question the said cancellation order in this Writ Petition, however, learned Government Pleader submits that the impugned order is appealable under Section 63 of the Act and therefore, in view of the alternative remedy available this Writ

Petition is not maintainable.

9. There is no dispute that in the toddy depot itself 1½ kg Alprazolem is found, which is a narcotic and psychotropic substance. The depot licence itself has been granted for storing the toddy and to supply the same to shop Nos.1 and 2, Koheer. In fact, the said Narasimha Reddy accompanied the authorities to the toddy depot and showed them the material being taken by the said Manikyam for the manufacture of adulterated toddy. It is stated that in fact, the said portion of the house of Narasimha Reddy has been taken on lease by the petitioner and other accused and therefore, it cannot be said that there was no link or connection with regard to the huge quantity found in part of the house of the said Narasimha Reddy which is said to have been taken on lease by the petitioner and other accused. However, Alprazolem which is a narcotic and psychotropic substance, itself has been found in the toddy depot. If that be so, as per Rule 5 of the Special Conditions, licencee shall not keep any article either in the shop or in the depot or even outside. Therefore, keeping Alprazolem in the depot is violative of Rule 5 of the Special Conditions and rules. When a huge quantity of Alprazolem has been found in the toddy depot apart from the other adulterants in the premises taken on lease, it cannot be said that the licencee has not violated the terms and conditions of the licence.

10. Under Section 31(1) (b) of the Act licensing authority is empowered to cancel the licence in the event of any breach by the holder thereof or by any of his servants or by any one acting on his behalf with his express or implied permission of any of the terms and conditions thereof. As per the terms and conditions of the licence, licencee cannot keep any article in the licensed premises which is injurious to health. Therefore, there is violation

of Section 31(1) (b) of the Act and if that be so, after giving the composite show cause notice, the licences can be cancelled. If no show cause notice is issued for cancellation of any particular licences, the cancellation of that licence is not valid, but in the instant case the composite show cause notice has been issued as to why licence of the toddy depot and licence of shop Nos.1 and 2 shall not be cancelled and accordingly cancelled its licences. The said action cannot be said as illegal and contrary to Section 31 of the Act.

11. For the aforesaid facts and circumstances, the Writ Petition is liable to be dismissed and accordingly the same is dismissed with costs.

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V. ESWARAIAH,J

30th August, 2007

Note:

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[1] 1994(2) ALT 270

[2] 2003(5) ALT 475